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Norma E. Ortiz
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Date: April 4, 2017
Time: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

ALFRED PLACERES,

Case No. 15-10691 (SMB)

Debtor.

Chapter 7

-----X
JOSE BORGES,

Plaintiff,

Adv. Proc. No. 15-01356-SMB

-against-

ALFRED PLACERES,

Defendant.

-----X

**NOTICE OF MOTION FOR AN ORDER (1) PERMITTING THE SUBSTITUTION
OF DEFENDANT'S COUNSEL OR (2) PERMITTING THE WITHDRAWAL OF
DEFENDANT'S COUNSEL**

PLEASE TAKE NOTICE, upon the annexed Motion and supporting documents, Alfred Placeres (the "Defendant") and Ortiz & Ortiz LLP, *pro se*, will move before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge for the Southern District of New York, at the United States Bankruptcy Courthouse, One Bowling Green, New York, New York, 10004-1408, on April 4, 2017, at 10:00 a.m., for the entry of an order (1) Permitting the Substitution of Defendant's Counsel or (2) Permitting the Withdrawal of Defendant's Counsel, and for such other relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that any response to the motion must be filed no later than seven (7) days prior to the hearing date, and served upon the Defendant's Counsel and the Chambers of the Hon. Stuart M. Bernstein.

Dated: March 7, 2017
Astoria, New York

S/Norma E. Ortiz
Norma E. Ortiz
ORTIZ & ORTIZ, L.L.P.
32-72 Steinway Street, Ste. 401
Astoria, New York 11103
Defendant's Counsel

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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**MOTION FOR AN ORDER (1) PERMITTING THE SUBSTITUTION
OF DEFENDANT’S COUNSEL OR (2) PERMITTING THE WITHDRAWAL OF
DEFENDANT’S COUNSEL**

TO THE HONORABLE STUART M. BERNSTEIN,
UNITED STATES BANKRUPTCY JUDGE:

Ortiz & Ortiz, L.L.P. (“O & O”), *pro se*, and Alfred Placeres (the “Defendant”), by his
attorneys Ortiz & Ortiz, L.L.P., respectfully represent as follows:

Background

1. O & O was retained by the Defendant to defend against the above-captioned
adversary proceeding.

2. Because the Defendant did not have the ability to compensate O & O at its
customary rates, O & O and the Defendant entered into a fee agreement dated November 11,
2015 (the “Agreement”) wherein O & O agreed to represent the Defendant at a substantially
reduced hourly rate through the discovery process and any possible mediation. The parties
agreed that given O & O’s reduced rates, the Defendant would obtain separate trial counsel if the
case progressed to trial.

3. The Court has resolved the motions for summary judgment, and will be scheduling a trial of the remaining issues. O & O has honored the terms of its agreement, and the Defendant has obtained new counsel to serve as trial counsel. A copy of a stipulation of substitution executed by O & O, the Defendant, and Maria Malave (“Counsel”) is annexed as Exhibit A.

4. However, the Defendant has not honored the payment terms of the Agreement. O & O has not received any payment of legal fees from the Defendant since in or about September 2016. O & O has rendered over 180 hours of legal services, and has maintained contemporaneous time records documenting the services rendered; it has received payment for less than 25 of those hours.¹

5. Since the Court has not yet scheduled a trial date, substitution of counsel at this stage should not cause any significant delay of the proceedings before the Court. In addition, proposed counsel served as the Defendant’s bankruptcy counsel, and has familiarity with the Defendant’s case.

Relief Requested

6. Local Bankr. Rule 2090-1(e) provides in relevant part that an attorney seeking to withdraw or be replaced as counsel must show cause for doing so. Unfortunately, the local rule does not define cause, and there is a dearth of bankruptcy case law addressing the factors considered when a defendant simply seeks to substitute counsel.

7. The Defendant asserts that since the Defendant contemplated retaining substitute counsel, and substitution should not delay the proceedings, it is respectfully submitted that cause

¹ Copies of the time records and retainer agreement are available for the Court’s inspection.

exists to permit the Defendant to proceed with counsel of choice.

8. Alternatively, O & O requests that the Court permit the firm to withdraw as counsel. New York Rule of Professional Conduct, Rule 1.16(c)(5) permits a lawyer to withdraw from representation based on a client's deliberate disregard for an agreement regarding legal expenses or fees. 22 N.Y.C.C.R. §1.16(c)(5) ("[A] lawyer may withdraw from representing a client when . . . the client deliberately disregards an agreement or obligation to the lawyers as to expenses or fees[.]"). Of course, when non-payment is the sole ground for withdrawal, it is within the Court's discretion to grant or deny such a request. However, it is respectfully submitted that given the amount of work performed for the Defendant without compensation, the Court should find that it would be inequitable to require O & O to continue rendering services to the Debtor under these circumstances.

WHEREFORE, the Defendant and O & O request that the Court grant the relief requested herein, and grant such other and further relief as it deems just.

Dated: Astoria, New York
March 17, 2017

S/Norma E. Ortiz
Norma E. Ortiz, Esq.
Ortiz & Ortiz, L.L.P.
32-72 Steinway Street, Ste. 402
Astoria, New York 11103
Tel. (718) 522-1117

Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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Plaintiff,

Adv. Pro. No. 15-01356 (SMB)

-against-

ALFRED PLACERES,

Defendant.

-----X

**STIPULATION AUTHORIZING SUBSTITUTION OF
DEFENDANT'S COUNSEL**

The undersigned hereby consent and agree that Ortiz & Ortiz, L.L.P., with offices located at 32-72 Steinway Street, Astoria, New York 11103, present counsel of record for the above-captioned defendant, shall be substituted as counsel for the debtor by Maria Malave, Esq., with offices located at 364 W. 121st Street, Ste. 2A, New York, NY 10027.

We further agree to the use of signatures obtained by facsimile transmission, or digitally created, or scanned as an electronic duplicate in lieu of original signatures.

Dated: Feb. 16, 2017

Dated: Feb. , 2017

s/Norma E. Ortiz

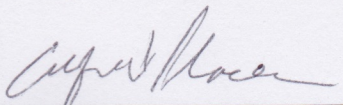
Retiring Counsel

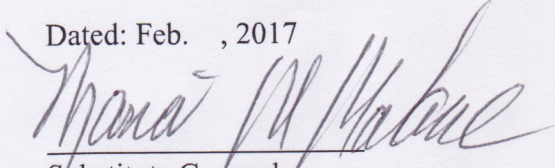
Norma E. Ortiz

Ortiz & Ortiz, L.L.P.

32-72 Steinway Street, Ste. 402

Astoria, New York 11103


Alfred Placeres


Substitute Counsel

Maria M. Malave

124 West 227 Street

Bronx, NY 10463

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

ALFRED PLACERES,

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Plaintiff,

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-against-

ALFRED PLACERES,

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**ORDER PERMITTING THE SUBSTITUTION
OF DEFENDANT'S COUNSEL**

Upon the Motion for an Order (1) Permitting the Substitution of Defendant's Counsel or (2) Permitting the Withdrawal of Defendant's Counsel dated March 17, 2017 (the "Motion"); the Court having conducted a hearing on the Motion on April 4, 2016; no written opposition to the Motion having been filed; due notice of the Motion having been given, and the Defendant having demonstrated cause for the relief requested in the Motion, it is hereby

ORDERED, that the Motion is granted, and Maria M. Malave, Esq., is permitted to substitute Ortiz & Ortiz, L.L.P., as Defendant's Counsel in the above-captioned proceeding.

Dated: New York, New York
2017

STUART M. BERNSTEIN
U.S. BANKRUPTCY JUDGE